

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

2005 JUL 12 P 3:58

No. 05-11738-EFH

Brendan M. McGuinness, PRO SE  
Plaintiff,

vs.

James R. BENDER, et al.  
Defendants.

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PLAINTIFF'S MOTION FOR THE COURT  
TO ORDER THE DEPARTMENT OF CORRECTION  
DEFENDANTS TO MAIL PLAINTIFF'S LEGAL MAIL OUT  
WHETHER IT BE TO A COURT OR ATTORNEY.

The plaintiff brings this motion to ask this Honorable Court to order the DOC defendants (specifically Russo) to mail plaintiff's legal mail out to any properly legal address. As reasons in support, plaintiff states as follows:

- 1.) I have been designated "indigent" by the DOC defendants by virtue of the fact that they allege I owe them upward of \$2,000 as restitution for past transgression. I dispute the legality of the restitution orders; the DOC has only seen fit to bring me to court once and on that occasion I paid what the court said I owed. My commissary account in the DOC has been frozen for over a decade.
- 2.) As a result of the account freeze, the DOC is responsible for affording me three (3) personal letters per week. I put the sealed envelope in the mail box and write "indigent" in the corner where a stamp would traditionally go. I have never had a problem with this system.
- 3.) In addition to personal letters, the defendants have always

mailed out my legitimate legal mail at no cost to me. After all, they have rendered me indigent. I have never been one to abuse this system. My correspondence to both court officials and lawyers or legal agencies have always been mailed out without any problems.

- 4.) Recently the DOC here at Souza-Baranowski have been refusing to mail out any legal mail for me unless it was addressed to a court house. Since I am able to mail three "personal" letters per week, it has not until now crippled me. However, when I have to mail out a large amount of paper (more than five pages or so), the mail room sends it back as failing to meet their "one (1) ounce or less" policy. See the attached notice, ¶ 2.
- 5.) As the Court can see on this notice referred to above, now the defendants or their subordinates are also refusing to mail a package of legal mail even to DOC counsel. I am unable to mail items essential to the present litigation to counsel; I am unable to serve the amended defendants; I am unable to maybe try to convince another attorney to take my case. I am crippled. If this is a policy allowed by regulation, I argue that it is not constitutional whereas it infringes on my most basic right of access to the court. I am unable to proceed if I cannot send out the documents relevant to this case.

Signed this 12th day of May, 2006, under penalty of perjury.

*July 7th, 2006*  
DATE: ~~5/12/06~~

RESPECTFULLY SUBMITTED,  
*Brendan M. McGuinness*  
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cc. William Saltzman, Esq.  
file.